



What is a Labour Foundation? A Comparative Perspective

Daniel Pérez DEL PRADO*

This study aims to identify the main elements that define the very practical, but at the same time quite unknown, institution of “labour foundation”, as the specific type of foundation related to labour issues. It is quite obvious, that single concepts of neither “foundation”, nor “labour foundation” actually exist. However, just as it has been possible to build a general concept of “foundation”, based on shared characteristics, the purpose of this research is to find those that are common to so-called “labour” and, thus, to provide a flexible definition of what the term might be understood as. Moreover, we will consider what kind of role the labour foundation can play in modern society and today’s labour market. To achieve this target, we have used a very practical methodological strategy, that is, analysing the main cases of “labour foundations” in the international arena and trying to define these essential basic features.

1. What Is a Labour Foundation?

What is a labour foundation?¹ The main purpose of this article is to try to provide an answer to this question and show what kind of role it is playing nowadays. However, as the reader can imagine, this task is not as easy as it seems. Theoretical and practical obstacles impede labour foundations from achieving complete development in a multitude of countries. Additionally, from an academic point of view, very few research papers pay attention to this specific and special kind of foundation. All of the reasons which explain these difficulties can be summarized in the two words, which compound the legal institution that is going to be studied.

* Associate Professor, Universidad Carlos III de Madrid, dpprado@der-pr.uc3m.es. The author wants to express his gratitude for the help and support given by the Fundación Laboral de la Construcción de Asturias, Manuel García Rubio and Armando Adebá García. This research has been possible thanks to their collaboration. He also wants to recognize the help given by the European Foundation Centre and its staff in Brussels.

¹ The term “work foundation” is also used, so it must be understood as a synonym.

First of all, no common legal definition of the term “foundation” exists, even in Europe. Countries that have civil law systems recognize the foundation as a legal form, but its limits differ from one country to another. Their bases can be found in the ancient *universitas rerum*, which explains that the most important thing in defining a foundation is patrimony or assets, which are destined to a determined purpose. Most common law countries, including the UK, Ireland, Cyprus and Australia, do not have a specific definition, but they use the concept of “trust”, that is, a relationship between property and trustees, and follow its legal development to case law. The exception is the US, which in 1969 established a precise, though negative, definition ⁽²⁾.

This heterogenic situation comes from, not only the different legal traditions, but also the different political systems and the role which foundations play within them. In spite of its private law basis, its development is quite close to the role played by the state. Using economic terminology, foundations are tools to “fill gaps” or cover market failures,³ so they are inevitably destined to converge with the state, which usually carries out the same function. Some research underlies the role of foundations as a complement to or a substitute for the state (and sometimes, as a rival)⁴ and, accordingly, it establishes different roles depending on the “type” of state.⁵

Therefore, it is possible to find different kinds of models (visions), depending on the kind of relationship between the foundation and the state.⁶ In the “social democratic model”, foundations exist in a highly developed welfare state; this is not an obstacle to carrying out quite intense activity, as part of a coordinated relationship that permits the foundations to play a complementary or supplementary role to that of the public authorities. In the so-called “state-controlled model”, foundations are viewed with suspicion, so they have to develop their activities within a quite controlling legal framework at a subservient level to the state. In practical terms, this model is quite close to the “peripheral model”, where foundations have a minor role, which is not necessary linked to regulation, but to other reasons such as the social perception of foundations. Both can be seen as more restrictive versions of the “corporatist model”, in which foundations have a subsidiary relationship with the state, as a consequence of the fact that they are considered a part of the welfare state and not as a “strange” element.

In the “liberal model”, foundations have a quite important place, but in a parallel system next to the government, frequently as an alternative to the mainstream and as safeguards for non-majoritarian preferences. Finally, in the “business model”, foundations are instruments used by corporations in

² H. K. ANHEIER: *Nonprofit organizations: theory, management, policy*. London–New York, Routledge, 2005. 304.

³ B. A. WEISBROD: *The nonprofit economy*. Cambridge (Mass.), Harvard University Press, 1988.

⁴ H. K. ANHEIER – S. DALY: Comparing foundation roles. In: *Foundations in Europe: society, management and law*. New York, Routledge, 2007. 27–41. [hereinafter: *Foundations...* (2007)] Actually, in this study other kind of different roles carried out by foundations are explained.

⁵ These studies are inspired by Sping-Andersen’s construction about the Welfare State. G. ESPING-ANDERSEN: *The three worlds of welfare capitalism*. Princeton (N.J.), Princeton University Press, 1990.

⁶ ANHEIER–DALY (2007a) op. cit. 45–58.

order to reach some public interest, so cooperative relationships emerge not with the state, but with the business sector.⁷

Nevertheless, considering the elements in common, some definitions have been given. Focusing on legal requirements which appear in all legal systems, foundations have been named as “independent, separately-constituted non-profit bodies with their own established and reliable sources of income, usually, but not exclusively from an endowment, and their own governing board”.⁸ In its most basic form, which underlines the role or purpose of this legal institution, “the foundation is based on the transfer of property from a donor to an independent institution whose obligation it is to use such property, and any proceeds derived from it, for a specified purpose or purposes over an often-undetermined period of time”,⁹ or “a private legal entity that possesses income-generating assets and devotes its resources to public purposes”.¹⁰

Accordingly, a foundation must have the following characteristics,¹¹: i) it must be an asset-based entity or non-membership-based organization, which means that it is based on an original deed that provides both intent of purpose and relative permanence as an organization; ii) it must be a private entity, which does not mean that it can belong to the State, but it is structurally separate from public bodies and it cannot exercise governmental authority; iii) it must be a self-governing entity: so it must be provided for by its own governing bodies; iv) it must be a non-profit-distributing entity, so it must not return profits to its owners or members; v) it must serve a public purpose, which must be understood as a purpose of general interest; and vi) it must be self-understanding and identity as a “foundation”, which distinguish it from other non-profit organizations. All these characteristics permit a foundation to be distinguished from other philanthropic entities throughout the world, despite the lack of a single legal definition.

In spite of this huge variety, all foundations can be classified in three different kinds according to their activity:¹² i) grant-making foundations, which provide funds for specific purposes; ii) operating

⁷ Two more models can be added. The Mediterranean model, found in the countries of southern Europe and characterized by a huge expansion of foundations in recent years; and the post-socialist model, typical in Eastern Europe and supported by outside funds and forming part of a political, though highly complex and ambiguous, agenda of public sector support. H. K. ANHEIER: *Foundations in Europe: a comparative perspective*. In: A. SCHLÜTER – V. THEN – P. WALKENHORST (eds.): *Foundations in Europe: society, management and law*. London, The Directory of Social Change, 2001. 68–75.

⁸ *Comparative Highlights of Foundation Laws. The Operating Environment for Foundations in Europe*. Brussels, EFC, 2015. 8. This reports analyses the regulation of foundations in 40 European countries from a cross-national perspective, focusing on the following elements in common: 1) purpose of foundation, 2) minimum capital, 3) state approval, 4) registration, 4) economic activities, 6) majority shareholding, 7) governing organs, 8) remuneration of board members, 9) reporting, 10) external audit, 11) supervisory authorities, 12) recognition of foreign foundations, 13) assets and dissolution, 14) administration cost, 15) timely disbursement of income and assets, 16) activities abroad and implications for the tax status, 17) gift and inheritance tax, 18) tax treatment of income from grants and donations, 19) tax treatment of income from asset administration and economic activities, 20) tax treatment of foreign-based foundations, 21) tax treatment of individual donors-domestic and cross-border cases, 22) tax treatment of corporate donors-domestic and cross-border, 23) overview of core elements of the legal requirements for public benefit tax status, 24) overview of purposes for exempt public-benefit status.

⁹ ANHEIER (2005) op. cit. 304.

¹⁰ ANHEIER (2001) op. cit. 2. See this research in order to study the historical background of foundations.

¹¹ H. K. ANHEIER – S. DALY: *Philanthropic foundations in modern society*. In: *Foundations...* (2007) op. cit. 8–9. (hereinafter: ANHEIER–DALY (2007b)); ANHEIER (2001) op. cit. 41–42.

¹² ANHEIER (2005) op. cit. 305–306.

foundations, which primarily operate their own programmes; iii) and mixed foundations, which combine these two kinds of activities. If we pay attention to the type of founder, four different kinds can be distinguished: i) individual foundations, when the founder is a natural person(s); ii) corporate foundations, of which the most common are company related or company sponsored; iii) community foundations, which are quite common in Anglo-Saxon countries and usually belong to municipalities; and iv) government-sponsored or government-created foundations, which they receive a high support from the state.¹³

These classifications will be useful in the study of the second element of the legal form which is the objective of this research. We are not referring to foundations in general, but to a specific kind of foundation that is delimited from a conceptual point of view by the adjective “labour”. As it has previously been indicated, this specification is neither completely closed, nor free from controversy.

We can handle the study of the foundation from the perspective of its aims and the activities of its founder. Regarding the first point, as a preliminary approximation, it is possible to say that this kind of foundation must target “labour issues”. But what are they? A labour foundation can develop programmes or activities within the limits of the so-called “standard employment relationship”, in other words, one that is defined, in a particular national context, as the legal link between a person, called an “employee” (frequently referred to as a “worker”) with another person, called an “employer”, to whom she or he provides labour or services under certain conditions in return for remuneration.¹⁴

However, the emergence of new forms of activities quite closely linked to work, but that go beyond the standard employment relationship is one of the challenges that are being handled by labour law. The main question is what kind of activities must be covered by labour law or, from another perspective, what the limits of labour law are and how to delimit them.¹⁵ Consequently, these kinds of problems are completely exportable to those foundations that try to manage labour issues. It would be possible to call “labour foundation” one that is formed by self-employed persons or which finances programmes for promoting entrepreneurship?¹⁶

Even if we succeed in recognizing an activity as one that can be called “work” or can be linked to labour or if we agree that only those that can be named “employment relationships” can be the main objective of a labour foundation, problems do not disappear. What kind of activities linked to the employment relationship is typical of labour foundations? Do these activities include those programmes that, financed by the employer, are focused on finding a new job, that is, those that

¹³ ANHEIER (2001) op. cit. 49.

¹⁴ This is the generic form as the ILO defines it.

¹⁵ *Recommendation 198 concerning the Employment Relationship*. Geneva, International Labour Organization, 2006. [hereinafter: ILO (2006)]; *European Parliament resolution of 11th July 2007 on modernising labour law to meet the challenges of the 21st century – P6_TA(2007)0339*. Strasbourg, European Parliament, 2007. [hereinafter: EP (2007)]

¹⁶ The Foundation of German Business (*Stiftung der Deutschen Wirtschaft*), called abbreviated to SDW, was founded in 1994 upon the initiative of the Confederation of German Employers' Associations (BDA). All SDW activities aim to provide young people with the best possible conditions for a good start to a successful and fulfilling professional career. An issue especially important to SDW is the advancement of entrepreneurial thinking and socially responsible action.

refer to ex-employees who were dismissed?¹⁷ Can they be included as typical of labour foundations' activities related to social security, or social programmes financed by the employer?¹⁸ Is a labour foundation that one which, involving both the government, trade unions and employer organizations, has as a primary purpose the promotion, especially in small and medium companies, of activities aimed at improving safety and health at work?¹⁹

Whether it tries to delimitate labour foundations from a subject's perspective, the situation does not change significantly. Can a labour foundation, to be named as such, be founded and/or managed by the two components of the employment relationship, that is, the employer and the employees even if its activities are not labour related?²⁰ If the answer is positive, it contradicts the concept of "foundation", which theoretically does not allow the founder and the beneficiaries to be the same people. Would it still be a labour foundation if it was founded by the employer, as the component that usually has a stronger financial position, but managed by him/her and his/her employees? In the case of a labour foundation which is managed by the employer and employees, can a third subject participate without affecting its legal nature as this specific kind of foundation?²¹

Considering all these difficulties, this study aims to find the main elements that permit us to speak about "labour foundation" as the specific type of foundation related to labour issues. It is quite obvious that, as was previously mentioned, a single concept of "foundation" does not exist, nor one of "labour foundation". However, just as it has been possible to build a general concept of "foundation", based on the shared characteristics, the purpose of this research is to find those that are common to so-called "labour" and, thus, to provide a flexible definition of what it might be understood as.

To achieve this target, a very practical methodological strategy is to be used, analysing the main cases of "labour foundations" in the international arena and trying to define these essential basic features. This will be the content of part 2. Then, according to this basis, a flexible definition of what a labour foundation is, as a specific form or type of foundation from a transnational perspective, will be provided. This will form the analysis contained in the last part, number 3.

If it is considered that "from a comparative perspective, few types of organizations have received less attention by researchers and policy analysts than foundations",²² analysing those that are directly linked with something so important and practical for our daily life as labour, it is not only a fascinating task, but it can produce some interesting results from a practical point of view. This, in turn, can lead

¹⁷ This is precisely the main objective of the Austrian labour foundations, which will be analysed in some detail afterwards.

¹⁸ Job security councils are a kind of foundation developed in Sweden that carry out active employment policies for the unemployed, permitting them, in some circumstances, to complement their unemployment insurance benefits in exchange for it.

¹⁹ This is the case of the Spanish "Foundation for occupational risk prevention" (Fundación para la prevención de riesgos laborales).

²⁰ The *Hertie Foundation* carry out programmes focused on combining work and family and family-friendly personnel policies.

²¹ For example, the foundation mentioned in footnote 20 or, continuing with the same country, the so-called Tripartite Foundation (Fundación Tripartita), formed by the same subject to promote vocational training.

²² ANHEIER–DALY (2007b) op. cit. 7–8.; EP (2007) op. cit.

to the development and improvement of a social-legal institution capable of improving the working conditions and the lives of workers all over the world.

2. Basic Characteristics of Labour Foundations

2.1 *Spanish Labour Foundations: the Pioneers*

Spanish labour foundations are a prototypical case, in spite being less well known as others, such as those in Austria for example.²³ The interest in these foundations is based on two main points. On the one hand, they give us concrete and specific regulations in relation to labour foundations. On the other hand, they represent the first regulation in Europe on this specific kind of foundation.

Spanish labour foundation regulations date back to 1961, when the Decree 446/1961, of 16th March, whereby labour foundations were created, was passed.²⁴ Then, the Order of the Ministry of Employment of 25th January 1962 developed the content.²⁵ According to its mission statement: “over time, the number of companies which, interpreting their social duties fairly, create charitable organizations within their structures to favour their employees is increasing; although these companies do not usually provide them with any kind of property, legal autonomy or control for their employees. The great labour that these organizations can develop, not only directly by their activities, but by bringing the people who are working in the same place closer, provides employers and employees with formulas that give stability to this activity and facilitate that employees’ solidarity with the efforts of the company, thus, contributing to optimal results”.²⁶ As a result, this is a tool that had been developed in the country, so the new regulations offer legal support and promote its spread.²⁷

In spite of this regulation being introduced during a period of antiquated concepts of labour relations, those typical of Franco’s dictatorship that conceives of a harmonious community between labour and capital,²⁸ it also reflects the first steps towards real collective bargaining. This trend can be seen to accelerate with the democracy by the Constitution of 1978, whose articles 34 and 37 promoted foundations and collective bargaining respectively.²⁹ The final result is that labour foundations go

²³ Jesús R. MERCADER UGUINA (ed.): *Fundaciones laborales: herramienta para canalizar la responsabilidad social empresarial*. Valencia, Tirant lo Blanch, 2009. 192.

²⁴ Spanish Official Gazette (BOE) of 20th March 1961, no. 67.

²⁵ Spanish Official Gazette (BOE) of 13th February 1962, no. 38.

²⁶ The author’s translation.

²⁷ Regarding the historical origins of labour relations, see J. I. RUIZ OLABUÉNAGA: Spain. In: *Foundations...* (2007) op. cit.

²⁸ C. GALA VALLEJO: Las fundaciones laborales: (su base ideológica y planteamiento jurídico). *Revista de Previsión Social*, vol. 19, 1963. 3–6.

²⁹ MERCADER UGUINA (ed.) op. cit. 17–19.

from being viewed with suspicion, owing to their novelty to be considered an advanced institution in the new period of Foundation Law and collective bargaining.³⁰

Consequently, the new Law 30/1994, of 24th November, on Foundations and Tax Incentives for Private Participation in Activities of General Interest³¹ was going to keep the previous regulation, explicitly including “groups of workers from one or two undertakings and their relatives” as beneficiaries of a foundation (art. 2.2) and order the renovation of the regulation through a new decree to the Government (additional provision 18).

However, a new law will substitute the former one with some important changes for labour foundations. The current Law 50/2002, of 26th December, of Foundations³² abrogated most of the content of Law 30/1994, including additional provision 18, and the Decree of 1961. This does not mean, however, that labour foundations no longer exist in the Spanish legal system. In reality, it is possible to find specific mentions, such as the art. 2 r) of Law 36/2011 of Social Procedure;³³ this expressly includes disputes related to labour foundations among the competences of labour courts; the art. 193.2 General Social Security Law,³⁴ which permits undertakings to improve the coverage provided by Social Security through, among other tools, labour foundations; or the art. 2.1.d) of Royal Decree 1337/2005, of 11th November, approving the regulation of foundations of state level, which expressly mentioned this kind of foundations and whose first additional provision defines them, but only “for the purposes of this regulation”.³⁵

Nevertheless, the Law has opted for regulating labour foundations through a general prescription instead of a specific one. It admits the existence of labour foundations as specific types of foundations and, consequently, its art. 3.2, concerning beneficiaries, tries to save one of their most important legal obstacles: “the founding purpose must benefit a generic group of people. This category includes groups of workers of one or several companies and their families”.³⁶ But, apart from this important exception, labour foundations must be governed with the same rules as any other foundation. This new regulation was criticized by the doctrine,³⁷ owed to it not dealing with the numerous peculiarities

³⁰ David LANTARÓN BARQUÍN: La Fundación y sus recientes proyecciones en el Derecho del Trabajo y de la Seguridad Social (Especial atención a las Fundaciones Sanitarias). *Relaciones laborales: Revista crítica de teoría y práctica*, 1, 2001. 17.

³¹ Spanish Official Gazette (BOE) of 25th November 1994, no. 282.

³² Spanish Official Gazette (BOE) of 27th December 2002, no. 310.

³³ Spanish Official Gazette (BOE) of 11th October 2011, no. 245.

³⁴ Spanish Official Gazette (BOE) of 29th June 1994, no. 154.

³⁵ Spanish Official Gazette (BOE) of 22nd November 2015, no. 279. Accordingly, the art. 11 a) of Royal Decree 1611/2007, of 7th December, whereby the register of foundation of state level is created (Spanish Official Gazette (BOE) of 19th January 2008, no. 17) recognizes labour foundations as the kind of institutions that are registrable in it. According to Spanish Constitution, both the State and Autonomous Communities are competent to regulate foundations' activities in their respective geographical area.

³⁶ As was mentioned previously, the concept includes that assets must be dedicated to a particular purpose. In some legal systems, only public purposes are admitted, whereas others allow foundations to pursue any lawful purpose, including private ones. However, in these latter situations, public tax benefits are usually excluded. In the case of Spain, only public purposes are admitted; this generated a huge debate on the legal nature of labour foundations and what really foundations are. On this debate, see J. RODULFO: *Las fundaciones laborales: problemática actual y régimen jurídico*, Grupo INI, Madrid], 1992, pp. 43-48.

³⁷ MERCADER UGUINA (ed.) op. cit. 36-37.

that these kinds of foundations have, which would be an obstacle for their future expansion and development.

Consequently, the Spanish legal system conserves the legal form of foundation, but with few specific rules. As previously mentioned, along with the legal reference to employees as beneficiaries, the Royal Decree 1337/2005 includes the concept of the labour foundation:

“For the purposes of this regulation, labour foundations are considered to be those which are:

- a) Created by agreement or contract between companies and their employees, [or] established by unilateral act of a company or third parties for the benefit of workers of one or several companies and their families.
- b) Formed between the most representative employers and trade union organizations in a given sector or some specific sectors for the development of employment purposes.”³⁸

Furthermore, the general legal concept of foundation is also applied (art. 2), which is defined as “a non-profit organization whose patrimony or assets, by their founders’ wish, is permanently intended for purposes of general interest”. According to this definition, three main characteristics delimit the concept of a foundation under Spanish law, which is not so different from others, at least in civil law systems: a patrimony intended for a purpose, that is managed by a specific legal entity and which pursues a general interest as a non-profit organization.³⁹

Comparing these two definitions, what are the keynotes of a labour foundation’s definition? Regarding the patrimony intended for a purpose, it could emerge in two different ways: a) by agreement between companies and their employees that is, by a collective bargaining agreement; b) by a unilateral act of the company or a third party.⁴⁰ So, here we have the first genuine characteristic of labour foundations, because, in addition to the unilateral decision or the will of one or more persons, collective bargaining agreements are also a legal way, and in this case the principal one to constitute a foundation.⁴¹ Moreover, this has some important legal consequences, because it connects the labour foundation to the right to collective bargaining (art. 37 of Spanish Constitution –SC), and, especially, to freedom of association (art. 28 SC), which is more protected as a fundamental right. In other words, labour foundations go beyond the limits of art. 34 of SC to link, not only to other rights, but to those with the highest protection in the Spanish legal system, as a part of the activities that trade unions can develop.

³⁸ First Additional Provision of Royal Decree 1337/2005. Own translation. This concept does not entail Autonomous Communities that have competences on foundations located within their territories. Andalucía, Canarias, Castilla y León, Cataluña, Galicia, La Rioja, Madrid, País Vasco and Comunidad Valenciana have passed their own laws on foundations. Source: Spanish Association of Foundations (AEF).

³⁹ U. DROBNIG: Foundations as Institutionalized Charitable Activity. In *Foundations...* (2007) op. cit. 608–611.

⁴⁰ This “bilateral” way of conforming labour foundations comes from the first regulation. In spite the fact that art. 3 of Royal Decree 446/1961 only mentioned the agreement between the company and workers, the subsequent Order also included unilateral acts of the employer or a third party (art.2).

⁴¹ GALA VALLEJO op. cit. 8.

This singular way is articulated by the direct agreement between the employer and his or her employees (or employees' representatives), or by agreement between the most representative employers and trade union organizations in a given sector or some specific sectors. It must be highlighted that any kind of collective agreement is valid in order to constitute a labour foundation. Each case refers to two different levels of bargaining, the company level and the sectoral level. As will be explained below, the latter is especially important for small and medium size enterprises (SME hereinafter), because it permits them to take profit from synergies derived from the higher scale.

Secondly, regarding the purpose itself, there are two main limits or requirements. On the one hand, there must be a "purpose of general interest" (general requirement), but, on the other hand, "for the benefit of workers of one or several companies and their families" (specific requirement). This means all kinds of purposes admitted for any kind of foundation will be valid for a labour foundation if it benefits the companies' employees and their families. The definition of a "purpose of general interest" is not limited by Law 50/2002, but it leaves an example list which includes, among others, those related to social assistance and social inclusion, education, culture, science, health, employment or promotion of social economy.⁴² The old Decree of 1961 mentioned assistance "work" or activities as inherent to labour foundations. However, it also included an open list that probably united those more common activities at that time: "kindergartens, schools, holiday and retirement homes, recreational, cultural and vocational training centres, company shops, sports facilities, medical services or other healthcare facilities, fellows, housing and generally any other kind of assistance activities for the benefit and enjoyment of those who serve or who have served in a company".⁴³ It must be noted that both the law and current Decree refer to "employees" simply, but do not mention former employees, as the Decree of 1961 did; this raises questions about whether labour foundations could develop programmes for workers who have been dismissed.

Thirdly, employees or, more correctly, their representatives, must take part in the management of the foundation. This is the logical consequence when the foundation is made up of collective agreement; that is, as was previously mentioned, the most common situation, but the Law does not impose it. The former Decree of 1961 did oblige the inclusion of workers' representation in the organs of government of the foundation.⁴⁴ This characteristic raised some important legal debates, because, from a theoretical point of view, a foundation's manager is usually the administrator of a tool, the foundation, which profits a third person. In the case of labour foundations, employees' representatives are not only administrators, but can even be the founders and beneficiaries; this raises the question of whether or not, this contradicts the legal nature of foundations, in order words, whether labour foundations are real foundations.

⁴² See art. 3.

⁴³ Art. 1 Royal Decree 446/1961.

⁴⁴ Art. 4 and art. 24 Order of 22nd January 1962.

These debates have been close to the Law 50/2002 which, as was previously mentioned, expressly says that “groups of workers of one or several companies and their families” can be considered to be a generic group for the purpose of the foundation, that is, they can be beneficiaries. Furthermore, as there is no rule that forbids their participation in the management of the labour foundation, *ope legis* means that there is no obstacle to admitting the participation of employees’ representatives in foundations organs of government. Apart from the law, this has been justified by the reasons that general interest does not mean the interest of a group of beneficiaries, or managers being free to act outside the foundation agreement. Accordingly, a foundation cannot be created to satisfy the private interests of a group of beneficiaries; neither can its managers adopt decisions that are contrary to foundation agreements.⁴⁵ Additionally, both creation and administration are shared activities; that is to say, not only can employees’ representatives participate, but the employer as well. Its presence guarantees the public purpose of the foundation and that founders’ and managers’ interests do not coincide with beneficiaries’. Furthermore, it is quite possible that, as has been pointed out, this is a special and particular characteristic of labour foundations.⁴⁶

Some studies have highlighted that the Spanish definition differentiates between levels of bargaining. At the sectoral level, purposes are named more broadly (“employment purposes”) and there is only one way to create a foundation: the collective agreement. At company level, purposes seem more reduced (“benefit of workers of one or several companies and their families”) and the paths to establish more diverse, not only collective agreements, but also any unilateral acts of the employer or a third person. This differentiation is used to underline that, in the second case, only the requirement that beneficiaries are employees is needed to use the term “labour foundation”.⁴⁷

In spite of this interpretation being quite correct, it is more complicated to admit that, at company level, all kinds of foundations focused on employees constitute labour foundation; this is because this would mean that there are as many kinds of foundations as possible types of beneficiaries. Distinguishing labour foundation from the rest needs, at least one of the two remaining requirements to be present. If the entity is founded by collective agreement, the situation is quite close to the one regulated for the sector level. Furthermore, whether the foundation is created by unilateral act, then, employees must have some kind of participation so, otherwise, there is no great difference between a classical or general foundation. In this case, from a practical perspective, it is so complicated that someone who is willing to share or delegate the management of foundation to workers’ representatives, is not favourable to reach an arrangement with them concerning the constitution. In any case, employees’ participation is crucial in order to use the term labour foundation.

⁴⁵ MERCADER UGUINA (ed.) op. cit. 45–46.

⁴⁶ Ibid. 46. This interpretation coincides with those that, in the international panorama, underlie the trend for foundations’ purposes to be more changeable and flexible. K. PREWITT: The Foundation Mission: Purpose, Practice, Public Presures. In: *Foundations...* (2007) op. cit. 351–357.

⁴⁷ MERCADER UGUINA (ed.) op. cit. 177.

Within these limits, what kinds of functions are labour foundations developing in Spain? As the legal concept has been defined quite broadly, the best way to realise the real impact of labour foundations is through practical examples. One of the most highlighted⁴⁸ is the “Fundación Laboral de la Construcción del Principado de Asturias” (hereinafter FLCA), which is defined as a “non-profit joint organism of a social and labour nature”. It was created in 1998 by a specific clause included in the Collective Agreement for the Construction Sector in Asturias⁴⁹, signed that year by employers’ regional associations (Confederación Asturiana de la Construcción (CAC) and Asociación de Promotores y Constructores de Edificios Urbanos de Gijón (ASPROCON)) and the two main trade unions (CCOO and UGT). This foundation is mainly aimed at employees who are under the mentioned collective agreement and their families but it also expands its scope to unemployed people from the construction sector and other collectives, if the programmes produce any kind of benefit for said construction sector. Their purposes are defined quite broadly, inspired by the Decree of 1961, but all of them can be summarized in the five main areas, highlighted as the main ones, in the practical functioning of labour foundations in Spain.⁵⁰

First, FLCA offers social benefits such as improvements or complements to social security ones. In addition to complementary temporary disability benefits,⁵¹ which are quite common in Spain, FLCA provides a construction sector employees family allowances and the so-called “sector loyalty” benefit which recognizes the permanence of the employer in the construction sector.

Secondly, learning programmes are one of the most supported by labour foundations in Spain and FLCA is a significant example. It has created two learning centres that specialize in vocational training for the construction sector. These centres offer courses for employees, unemployed people and young students and adapt them to the necessities and requirements of the companies. The foundation has also created the so-called “professional construction card” and “professional construction card for the self-employed”. This is a document that credits, among other data, the training received by the worker in the area of occupational risk prevention and that is required by law in order to carry out

⁴⁸ This foundation has been recognised by the EU Council as a Model of Good Practices in the application of EU Guidelines for Employment (Helsinki, 1999).

⁴⁹ The “Principado de Asturias” or simply “Asturias” is an Autonomous Community located in the north of Spain.

⁵⁰ MERCADER UGUINA (ed.) op. cit. 141–157. For studying FLCA’s activities with more detail, see: *Memoria de actividades 2014*. FLCA, 2015.

⁵¹ Spanish temporary disability benefits cover this kind of risk with 60% of the insured’s daily average earnings in the last calendar month before the incapacity began, which is paid from the 3rd to the 20th day; and 75% from the 21st day for up to 12 months (but it may be extended for six months). Collective bargaining agreement used to complement both days and quantities. In this case, labour foundation is used as a tool to implement it.

activities in this sector.⁵² This special effort made in education and training has been recognized as a good practice by the majority of specialized entities.⁵³

The third great area is what is known as “social action”, that is, a heterogeneous group of benefits, which provide economic aid or services, that are not directly connected to labour or guaranteed by law.⁵⁴ Here, FLCA are in charge of providing scholarships and aid-assistance for disabled people; promoting research and development programmes; conceding allowances for rehabilitation or access to the first home; promotion of scientific and technical research in the field of construction; implementing programmes relating to the use of new technologies, with particular attention to computer and telecommunications.

Fourthly, employment policies and labour intermediation are other activities developed by FLCA; this shows that its purposes goes beyond the construction sector’s workers to extend to unemployed or young people who want to find a new job. Hence, FLCA has its own employment agency, which collaborates with the regional public employment service, and a program of hiring incentives that gives support to their vocational training students.

Finally, among the activities developed by labour foundations it is quite common to find those related to occupational risk prevention. Programmes developed by FLCA range from the area of education and training, as was shown previously, to inspection activities, in collaboration with the Employment and Social Security Inspectorate. The results of the latter not only correct the detected anomalies, but the elaboration of practical reports on the situation of the sector, giving some suggestions, both to the companies and public authorities, in order to improve occupational risk prevention and the application of labour law rules.⁵⁵

2.2 Austrian Foundations: the best known, growing limit Labour Foundations

Austrian foundations are probably the most well-known labour foundations. They were born in a very specific context that determines their following development. Specifically, the first labour foundation, the Steel Foundation was created in the 1980,⁵⁶ taking as an example the experiences carried out in

⁵² Actually, the Spanish “Fundación Tripartita para la formación en el empleo” (Tripartite Foundation for Vocational Training) centralizes the main effort in the area of vocational training and education for both employees and unemployed people in Spain. The presence of the Public Administration in its foundation and management has been used to exclude it from the group of “labour foundations”. UGUINA (ed.) op. cit. 136–137. However, it is officially registered as such and, considering the rules exposed here, there would be no problem in classifying it as a labour foundation. Its results have been highlighted as good practice. P. SZOVICS (European Centre for the Development of Vocational Training) (eds.): *Sectoral training funds in Europe*. Luxembourg, Office for Official Publ. of the Europ. Communities, 2008. 51–70.

⁵³ SZOVICS op. cit. 71–78.

⁵⁴ A. MARTÍN VALVERDE: *Las mejoras voluntarias de seguridad social*. Instituto García Oviedo, Universidad de Sevilla, 1970. 17.

⁵⁵ See FUNDACIÓN LABORAL DE LA CONSTRUCCIÓN DEL PRINCIPADO DE ASTURIAS: *Informe de situación del sector de la construcción del Principado de Asturias 2015*. FLCA, 2015.

⁵⁶ “Arbeitsstiftungen”, as it is called in German, is highlighted as a successful model for the solution of regional structural and labour market problems. This instrument was first used in the framework of the VOEST-Alpine Steel Foundation (1987).

other German industrial areas.⁵⁷ The purpose of this legal tool is to reconvert the most important Austrian steel company, achieving a complex equilibrium between the vindicating industrial workers and their trade unions and the rest of society.

Hence, on the one hand, the Austrian steel industry was no longer economically viable in a context of global concurrence, what meant that massive redundancies might be adopted, as the first step in a process of complete renewal. Some important decisions had to be taken to try to drive this complex process, minimizing both social effects and the unions' response. On the other hand, not just any kind of answer was going to be understood by a society involved in a huge variety of social, economic and political changes.⁵⁸

The final result is a legal form where all these parties are represented, but in which the main solutions come from those most affected: employers and employees. The establishment of labour foundation is based on an agreement between social partners at company or sector level in collaboration with the regional labour market service authority.⁵⁹ Accordingly, in spite of the fact that public administration support is going to be needed, as will be explained, the success of Austrian labour foundations probably comes from giving solutions supported (and financed) by the employer, workers and ex-employees. In these ways, pre-retirement, active job seeking and, in particular, education, training and requalification programmes were implemented in order to give a new labour opportunity to all those workers who saw themselves as having been dismissed (and paying special attention to older and young job-seekers).

Thus, taking a pre-existing legal institution, the foundation, was going to be focused on not just any kind of labour issue, but a quite important one, that is, minimizing the effects of massive dismissals. This means that a "private" solution (this is what foundations primarily symbolize), that is, one which is adopted by the parties involved, was going to genuinely canalize the conflict. Additionally, it represents a specific image of labour relations, in which employers' and workers' obligations and responsibilities do not finish at the end of employment relationships, but continue until the employee finds a new one. This uncommon, but quite catching idea from the social state's perspective was going to deserve stronger public support quite soon.

This is the reason, why some important reforms (1977 Unemployment Insurance Act –AIVG)⁶⁰, or new laws (1994 Public Employment Service Act – AMSG)⁶¹ were adopted. As can be seen, this

⁵⁷ R. WINTER-EBMER: *Long-term consequences of an innovative redundancy-retraining project: The Austrian Steel Foundation*. Working Paper. Johannes Kepler University of Linz, Department of Economics, 2000. 6.

⁵⁸ P. SUSCHNIGG: *From Austrian Labour Foundations to Job Transfer: Training Strategies Under Three Labour Relations Regimes*. North York (Canada), York University, 2001. 4–11.

⁵⁹ E. Voss: *Organising Transitions in Response to Restructuring*. Hamburg, European Commission, 2010. 41.

⁶⁰ Art. 18 (6)–(9) recognises labour foundation measures which are complemented by arts. 12 (5) and 18 (5); this extends unemployment benefits and unemployment assistance for those who accept participation in these kinds of measures.

⁶¹ Arts. 32 (3), 34 and 35 permit outsourcing of services to suitable providers and grant subsidies for this purpose.

legal support is not driven to regulate labour foundations, but to accommodate employment policies (passive and then active) to the new tool.

Nowadays, Austrian labour foundations are probably the most known and one of the most successful tool in the area of employment policies.⁶² A quite broad group of measures, such as career guidance, vocational training, active job search, practical training in the form of internships, and so on, are offered to contribute to the vocational reorientation and upskilling of unemployed people, and to facilitate their reintegration into the labour market.

Two main types of labour foundations are usually distinguished, although elements of the two categories can be combined.⁶³ On the one hand, the outplacement labour foundation carries out different kinds of training programmes in the early stages of redundancy or pending redundancy for a larger group of workers. This is the traditional work foundation developed in Austria. In spite of this, as was mentioned previously, this foundation was born at company level to solve the problems derived from managers' decisions (in other words, this is a "company foundation" or "*Unternehmensstiftung*"), then other kinds of outplacement work foundations have also emerged. So, in addition to "company foundation", others can be distinguished: the insolvency foundation ("*Insolvenzstiftung*"), which is launched by a territorial authority or other suitable legal entity in the event of the insolvency of an enterprise; and the sectoral foundation ("*Regionalstiftung*"), established at regional level where a whole territory is significantly affected by restructuring.

On the other hand, implacement labour foundations ("*implacementstiftung*") seek to place unemployed people, with appropriate qualifications, in available jobs by offering a broad package of supportive measures, such as career guidance, vocational training, active job searches, and work experience programmes. These programmes focus on skilling up unemployed workers, including the possibility of working in a company once the programme is completed. In this way, these foundations offer trained workers in order to meet employers' special skills bottlenecks. This separates labour foundations from their traditional role, within a restructuring framework, to drive them to the employment policies system, fully extending their field of action.

The increase of the foundations' sphere of influence affects not only the activities carried out, but the subjects involved as well. Both outplacement – especially at regional level – and implacement foundations enable small and medium sized companies (SME hereinafter) to access a complete package of employment measures, which are unachievable, if they have to finance and carry them

⁶² In fact, it has been highlighted as a practical example of "flexicurity" along with the Austrian severance payment system. EUROPEAN COMMISSION: *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. «Towards Common Principles of Flexicurity: More and better jobs through flexibility and security»*. COM(2007) 359 final. Brussels, European Commission, 2007. 19.

⁶³ *Basic Information Report Austria. Reporting Year 2012/2013: Institutions, Procedures, Measures*. Vienna, Federal Ministry of Labour, Social Affairs and Consumer Protection, 2014. 256. See this report to find basic information about Austrian Labour Foundations. A brief description of both, outplacement and implacement foundations is also available on Eurofound's website. See footnotes 69 and 70.

out by themselves. This is a quite important advantage of labour foundations, because they act as a catalyst that permits SME to take a profit of scale economies derived from their activity.

Another example is what can be called “target group foundations”.⁶⁴ These are a subtype of labour foundations,⁶⁵ launched by social partners through collective bargaining, in order to address the economic difficulties of specific target groups to reintegrate themselves into the labour market. Maybe, one of the best example⁶⁶ is the JUST implantation foundation (“*Jugendstiftung*”), which offers training programmes primarily to enable young unemployed people to take the final apprenticeship examination (LAP), or to find a new job. This foundation was created in 2011 in all nine Austrian provinces, following tripartite talks between the social partners and the Federal Ministry of Labour, Social Affairs and Consumer Protection (BMASK): it is administered by the non-profit organisation AUFLEB.⁶⁷

According to Eurofound’s data, at the end of 2009, about 170 implantation foundations were in place, reaching a peak with 7,441 new entrants and decreasing to 3,579 persons in 2012.⁶⁸ The number of people supported in outplacement foundations was 5,780 persons in 2009, decreasing as well in the following years, to 1,772 in 2012. Both of them have a job placement rate of about 75%, which has been described as successful.⁶⁹ However, among their weaknesses, the high cost is highlighted.⁷⁰ The following table shows both the number of beneficiaries and the costs.

Table 1.

**Beneficiaries of labour foundations/UB for
foundation programmes - annual average stock**

	Beneficiaries total (m+f)	Beneficiaries in % of empl.	Men	Women	Expenditure	
					€	as % of GDP
2002	4,413	0.119	2,881	1,532	45,357,388	0.021
2003	5,332	0.144	3,473	1,859	56,583,638	0.025
2004	5,310	0.143	2,983	2,327	58,880,146	0.025
2005	4,811	0.127	2,568	2,243	66,580,751	0.027
2006	4,864	0.125	2,478	2,387	69,822,882	0.027
2007	4,660	0.118	2,270	2,391	69,046,733	0.025
2008	4,912	0.122	2,280	2,631	70,713,291	0.025
2009	7,677	0.192	4,036	3,641	113,826,034	0.041
2010	9,292	0.231	5,029	4,263	158,492,163	0.055
2011	6,869	0.169	3,530	3,339	117,873,261	0.039
2012	5,424	0.132	2,632	2,792	92,144,832	0.030

Source: Federal Ministry of Labour, Social Affairs and Consumer Protection: *Basic Information Report Austria. Reporting Year 2012/2013: Institutions, Procedures, Measures*. 2014.

⁶⁴ Ibid. 257.

⁶⁵ In principle, both implantation and outplacement foundations are appropriate for this purpose

⁶⁶ This foundation has been selected by Eurofound as a good practice within restructuring measures for SMEs. Eurofound; I. MANDL: *Public policy and support for restructuring in SMEs*. Dublin, Eurofound, 2013. [hereinafter: Eurofound]

⁶⁷ AUFLEB GmbH is sponsored by the social partners, the Austrian Economic Chamber (WKO) and Austrian Trade Union Federation (ÖGB) and it is in charge of managing the foundation in cooperation with all federal provinces (with the exception of Vienna, for which the WAFF (Vienna Employment Promotion Fund) is participating). More information at <http://www.aufleb.at>.

⁶⁸ <http://www.eurofound.europa.eu/observatories/emcc/erm/supportinstrument/implacement-work-foundation>.

⁶⁹ <http://www.eurofound.europa.eu/observatories/emcc/erm/supportinstrument/work-foundation-outplacement>

⁷⁰ Eurofound. See footnotes 68 and 69.

This success is partially explained by the support given by employment policies. On the one hand, regarding passive policies, participants in labour foundation programmes may have unemployment benefits extended to 156 weeks. If training takes longer or foundation programme participants are older than fifty, unemployment benefits may be claimed up to 209 weeks. Participation in the labour foundations is voluntary (employees may choose to claim other measures from Public Employment Service –*Arbeitsmarktservice* Österreich, AMS – and/or draw unemployment benefit), so, in this way, there is a clear incentive to participate in the active employment measures developed by the foundations.

On the other hand, there are some differences in relation to the finance of active employment policies depending on the type of foundation. It must be underlined that the foundations' activities are financed by employers' and employees' contributions (even when they are dismissed) and by public authorities (AMS, regions, local authorities and so on.), so the latter varies in relation to the kind of foundation. The different types of labour foundations are characterized also by different kinds of financing as the following overview illustrates.

Table 2. Financial Modalities Depending on Type of Foundation

Type of foundation	Public funds	Private funds
Insolvency foundation	Co-financing for the costs of career guidance, training and continued training provided by external providers, active job-search and allowance for course-related additional costs up to 60% of total costs.	Co-financing by company and/or workers (often in the context of a social plan and/or severance payment packages)
Regional foundation	As in the case of insolvency foundation but only up to 35% co-financing of total costs	Co-financing by company and/or workers (often in the context of a social plan and/or severance payment packages)
Sectoral foundation	As in the case of insolvency foundation but only up to 35% co-financing of total costs	Co-financing by company and/or workers (often in the context of a social plan and/or severance payment packages)
Company foundation	No co-financing apart from the payment of "foundation unemployment benefit" according to §18.5 AIVG (Unemployment Insurance Act)	Companies, workers and (by contributions) are financing the establishment and maintenance of the foundation as well as the training courses.
Implacement foundation	Only the cost of training and continued training by external providers is eligible for financial support up to 35% co-financing of total costs	Companies, workers and (by contributions) are financing the establishment and maintenance of the foundation as well as the training courses.

Source: Federal Ministry of Labour, Social Affairs and Consumer Protection: *Basic Information Report Austria. Reporting Year 2012/2013: Institutions, Procedures, Measures.* 2014.

The financial sources of labour foundations are clearly based on the principles of shared responsibilities and solidarity, and show how public support is the key which explains its success. Compared to the Spanish experience, the difference is based on the kind of financial support. Whereas Spanish foundations receive economic help by tax rebates, as is traditional in foundations, the Austrian foundations are financed by the AMS through the unemployment insurance scheme and the active labour market policies budget (mixed funding model).

If the Austrian experience is compared to the Spanish one, some important common areas can be seen, but also some important differences emerge. On the one hand, there is a practical response to some specific problems the law. However, neither the context, nor the objectives, nor the reactions are the same; whereas the Spanish experience was born in a context of industrial development, in order to give support to a quite broad group of social interests, the Austrian one arose in the crisis of this sector to minimize its terrible effects, that is, focusing on lay-offs. In spite of the fact that Austrian labour foundations have spread their purposes; they remain smaller than in the previous model.

Additionally, the role of the law is also quite different. On the one hand, in Spain we have what can be called the “legal-channel system”, that is, the law regulates a new informal practice that was being carried out as a way to support it, and thus foresees subsequent problems. In other words, the law channelizes a previous social practice. On the other hand, in the Austrian case, the law is only a complement to a social experience and does not intervene beyond this complementary role. From this different point of view, supporting labour foundations does not require regulation, but installing them in the more complex system of employment policies does. This is particularly possible thanks to, as previously mentioned, their purposes being reduced.

Regarding similarities, the most important point in common is that both of them share the three elements which seem to underlie labour foundations. So, Austrian labour foundations also are created by a collective agreement and the employees and/or their representatives are involved not only in their creation, but in their management and activities. Moreover, Austrian workers bring their participation into the financial field, supporting foundation’s activities even when they are not the direct beneficiaries. It is true that Austrian experiences mainly focus on unemployed people, whereas the current Spanish law does not expressly mention workers who do not have a job. However, as was mentioned previously, in fact, these kinds of beneficiaries are also present in the Spanish model.

Additionally, the public administration support or presence is stronger in Austria but it is not clear if it must be considered as a part of the model of public authority “collaborates” working in the foundation’s activity. In this sense, their role would be exactly the same as in the Spanish case, in spite of the means and intensity being quite different as has already been explained. This probably links to the different legal system and welfare state model, where it has a direct translation into the role of foundations within society and their relationship with the State, as was explained in part 1.

In all cases, in spite of the differences, it is possible to find some points in common, which act as vectors that delimitate the concept of the labour foundation, it may be interesting to look for these elements in other national experiences.

2.3 Other Examples in Europe

In addition to these two models, it is possible to find other examples in Europe that are quite close to the concept of labour foundations as they have been delimited in Spain and Austria. These other experiences will also be useful in making up a concept of work foundation which is valid independently of national idiosyncrasy or legal systems. Our aim is to describe them succinctly, trying to find the points in common with the previous ones. In other words, the most important thing is seeing if the points in common which have been highlighted also appear here.

One of them is the Swedish “job security council”.

This can be defined as an institution, whose creation and functioning is based on collective agreements, and which focuses on giving support to unemployed people in their efforts to find a new job. This support takes the form of active employment policies as well as the provision of financial compensation, complementing the general unemployment insurance benefits system.

The first work security councils were developed in 1972 and 1974 in a context of deteriorating economic conditions and massive dismissals of white-collar workers in the oil crisis of 1973. Thus its genesis is quite close to the Austrian experience, but with a little advancement and some focusing on non-industrial sectors. As the public employment services seemed to be incapable of providing sufficient support for these workers in their job seeking, the social partners agreed upon establishing a particular organisation that would provide services to this group of employees. Over time, such organisations have been established in most segments of the labour market.

Their activities are organised under a specific form of non-profit foundation, whose regulation and activity is determined by collective agreement. The different partners involved in the agreement are represented in the foundation, and participate in its activity, with the seats split equally between the employers’ representatives and employees’ representatives, that is to say, it is a joint organization. They have the task of deciding upon the scope and content of the support that is to be granted.

The public support comes from the most usual way concerning foundations, that is, tax benefits. This type of labour foundation is exempted from having to pay taxes, under the condition that at least 80% of the foundation’s returns on capital are redistributed to the unemployed people who are the beneficiaries of the policies developed by said foundation. From this point of view, the Swedish experience is closer to the Spanish one. Accordingly, its finance mainly depends on the employer, who has to pay a “membership fee” in the form of a percentage of their total payroll.

The results of this institution seem to be quite positive as well. “Job Security Councils themselves claim, however, that around 80% of their participants find a solution within a period of seven months, and that this number was sustained even during the financial crisis of 2008-2010. This suggests that there is a relatively weak relationship between redundancy and unemployment, perhaps as a consequence of the different activities to enable workers to find new jobs following dismissal. Thus,

those who have a job and lose it are often transferred into a new job within a relatively short period of time”.

Either way, and in spite of the fact that there are similarities between both models, the Swedish case is closer, considering its origins, functioning and characteristics, to the Austrian one. Nevertheless, both the important role of collective bargaining and the participation of the workers in the management and as beneficiaries seem to be the pillars that sustain this kind of foundation as well.

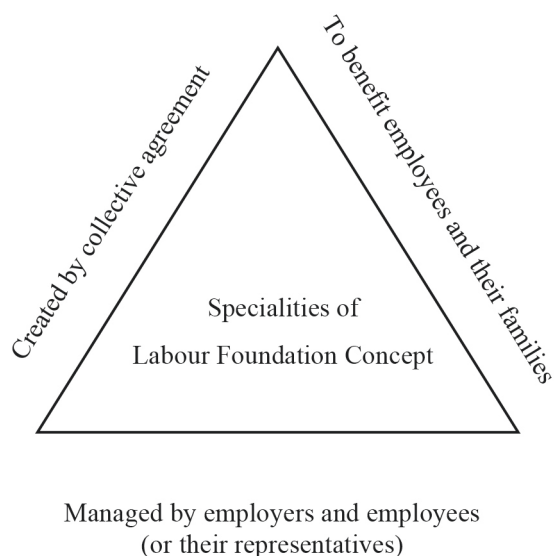
These three elements do not appear in other cases that are also quite close to the concept of labour foundations, however, it is doubtful that they can be called as such. For example, in Belgium, the *King Baudouin Foundation* finances research on mentoring and job coaching initiatives, with the objective of finding good practices to be applied in Europe. Even if it is considered that the beneficiaries are the employees in a broad sense, no relationship with collective bargaining, or the participation on the part of the social partners takes place. Additionally its programmes and beneficiaries go beyond the labour field.

In France, la *Foundation de France* supports employment programmes for unemployed people who have special difficulties in finding a new job. In Germany, the *Bertelsmann Foundation* develops projects related to “the challenges faced today by labour markets and social security systems across the European Union”, the *Freudenberg Foundation* has been committed to promoting vocational education and vocational integration of adolescents from disadvantaged families, and the *Hertie Foundation* carry out programmes focused on combining work and family and family-friendly personnel policies. In the UK, the *Thompson Foundation* gives support to trade unions and their members. In Italy, the *Fondazione CRT* has implemented a programme called “Iniziativa Lavoro” to promote employment among young and unemployed people, whereas the *Unicredit foundation* works to promote entrepreneurship.

All these foundations show that, in spite of their evident links to labour issues, it is not so clear that they can be called work foundations. Compare them with the previous ones, clear differences emerge, and these elements require a detailed delimitation of the elements or characteristics that underlie this kind of foundation.

3. Conclusions: concept and role of Labour Foundations

Considering all of the aforementioned, it is possible to say that what distinguishes labour foundations from others is the presence of the already mentioned three elements, which are represented in the following figure. These three elements are the important role of collective bargaining specially in its creation, the participation of workers in its daily activity and that its activity is mainly focused on employees in a broad sense.

Figure 1. Specialities of Labour Foundation Concept

Firstly, a labour foundation is the fruit of collective bargaining. Without considering the differences between legal systems and tradition, the first point that distinguishes labour foundations from others is that they are born from an agreement between social partners. Even in legal systems where the creation by a unilateral decision of the employer is admitted, such as in the Spanish case, the role of collective bargaining has been underlined as the main way to create a work foundation.⁷¹ This is also the first element that links the foundation to the employment relationship in

order to refer to it as “labour”. Indeed, one of the traditional roles of labour law is to channelize disputes between the employer and the employees. Labour foundations can not only fulfil this role very efficiently, as the Austrian experience shows, but can go beyond this traditional point of view to become quite advanced tools of collaboration between social partners.

Secondly, using “labour” to refer to a foundation requires the participation of workers. This means that they must not only be beneficiaries of its activity, but they must also take an active part in its daily task list. Regarding the first point, the term “beneficiary” must be understood in a broad sense, this is quite usual in the social law. As mentioned previously, the concept of labour relationships and, accordingly, the notion of “worker” are being transformed by the evolution of society and economic activity. Moreover, social law traditionally has had quite a flexible and broad concept of “employee” in order to guarantee the coverage of both labour and social security Law. Taking both elements into account, there is no reason to exclude as “employee” someone who is unemployed because, in spite not having a direct relationship with a company or sector, the employee has an indirect one, which comes from a previous employment relationship; this is exactly the same reason that permits the Social Security system to provide him with unemployment benefit, to take the most prominent example. In other words, labour foundations are created to provide services (quite different depending on the model) to workers without considering if they are actually working or whether they are seeking a new job.

But, thirdly, the role of workers cannot be simply passive. As the comparative experience shows, the existence of a labour foundation requires workers to participate quite actively both in its creation and in daily life. This is quite an obvious consequence when the labour foundation is created by collective agreement and, again, it links to the role of collective bargaining as a legal institution and, more generally, to the role of labour law. If we affirm that labour foundations are tools that go beyond

⁷¹ See footnote 44.

conflict to become advanced instruments of collaboration between social partners, it is quite obvious that workers' participation must be guaranteed. This must be affirmed, even in those models where the creation of labour foundations can be produced by a unilateral act of the employer, affirming that what distinguishes labour foundations from other foundations is precisely both collective bargaining and workers' participation.⁷²

If all these considerations are taken together, it is possible to see that all the elements that underlie the foundation are based on the idea of employment relationships.⁷³ Its creation, assessment and targets are direct links to the special and specific connection between the employer and their employees. And this is what in turn connects it to labour law. Moreover, the connections between them go beyond this point. Labour law is an area of convergence between public and private issues and, therefore, it is plenty of general interest to be defended. This makes labour and social security law an appropriate field for the development of labour foundations.⁷⁴

Nevertheless, the potential of labour foundations can only be measured by their capacity for solving labour and social problems. Removing the obstacles that hinder their development and promote them among companies and sectors can be a useful strategy to improve competitiveness, social dialogue and labour conditions. The main role which labour foundations play in our society today can be divided into the following three:

Firstly, they are an instrument for the promotion of social dialogue, which has a great importance from the European employment policies perspective.⁷⁵ Labour foundations permit a better, closer and stronger relationship between employers and employees, which consequently makes that bargaining issues are not concentrated when the collective bargaining agreement must be negotiated, but it extends dialogue a long time. It not only permits analysis and finding practical solutions for the different problems of an economic sector between the two main parties involved, but provides useful information for each one. Employers will be aware of the labour and social conditions of their employees and in turn, their employees will take advantage of companies and sector information.

In this sense, the labour foundation is a legal instrument that perfectly links to the idea of "flexicurity"; this is because among its activities, both those related to more flexible labour markets and those that look for more social protection and security can be found.⁷⁶ Here we have a tool in the hands of those who are closer to the labour market, that is, the social partners, who can serve both the employers' and the employees' interests. Moreover, it is considered that this strengthens the daily

⁷² RODULFO op. cit. 54.; GALA VALLEJO op. cit. 9.

⁷³ RODULFO op. cit. 68.

⁷⁴ LANTARÓN BARQUÍN op. cit. 173–174.

⁷⁵ *Communication from the Commission: «Partnership for change in an enlarged Europe – Enhancing the contribution of European social dialogue»*. Brussels, European Commission, 2004.; *Communication from the Commission: «The European social dialogue, a force for innovation and change»*. Brussels, European Commission, 2002.

⁷⁶ B. GAZIER: *Flexicurity and social dialogue, European ways*. University Paris, vol. 1, 2006.

relationship between them; the labour foundation becomes an ideal instrument to find equilibrium between competitiveness and welfare and social protection.

Secondly, labour foundations are tools for business social responsibility. This comes not only because some of them contribute to some social programmes that go beyond the company or one economic sector, for example, those for unemployed or disabled people. Contributing to vocational training or research and development, labour foundations can improve the economic situation of the company, its productivity or its competitiveness. Investing in education, they are not only developing a useful program for a company or a sector, but for the whole of society. By implementing social benefits for their employees and families or even, unrelated people, they are acting as tools that show that companies' interest can go beyond profit. It promotes a closer relationship not only with the personal and social situation of the employer, but with society as a whole.

Some research has underlined that one of the areas where labour foundations can potentially be extended in the future is in their use as investment funds.⁷⁷ This can be materialized as a joint fund, in which both the employer and the workers jointly finance different kinds of programmes related to the foundation's objective. The already mentioned FLCA would be a good example. However, this can also be crystalized in a company's investment fund in which the undertaking's surplus is used to promote the same kind of activity, but with the important factor that workers or their representative participate in determining the use of this fund. In this way, business and social responsibility is conjugated with a better and more active participation of social partners.

Last but not least, they are tools for the improvement of SME conditions. When sectoral collective agreements create a foundation for a specific geographical area and/or activity, they can provide services and programmes for SME that they cannot obtain or finance by themselves. This is a clear case in which SME can profit from the economies of scale generated by a supra-level institution such as the labour foundation. This is particularly important in the vocational training area. Programs are usually quite expensive for these kinds of companies, but foundation can give them an affordable cost. It is true that governments usually plan programs for SME considering this context, but even in these cases, foundations can function as a sort of agent of change, concentrating funds and distributing them among companies in the sector. Additionally, these companies can participate in the foundation's activities, through their representatives, and, hence, determine the type of programme that best suits their needs.

All these reasons explain why labour foundations can be efficient tools to achieve equilibrium between employers' and employees' interests, labour flexibility and job security or business profitability and social responsibility. The labour foundation is an old and not very well known instrument for meeting the economic and social challenges of the society of our times.

⁷⁷ RODULFO op. cit. 32–36.